

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

CVS PHARMACY, INC.,

Plaintiff,

v.

JOHN LAVIN,

Defendant.

Civil Action No. _____

COMPLAINT AND JURY DEMAND

Plaintiff CVS Pharmacy, Inc. ("CVS") brings this action to enforce a covenant not to compete and a covenant not to disclose confidential information against defendant John Lavin ("Lavin"). Until giving notice of his resignation this month, Lavin was a senior vice president at Caremark, L.L.C. ("CVS Caremark"), CVS's prescription benefit management ("PBM") business, where he led negotiations with pharmacies in CVS Caremark's pharmacy network. Lavin's resignation notice states that he intends to join PillPack LLC, an Amazon-owned pharmacy that participates in CVS Caremark's network. While Lavin has indicated that he does not intend to negotiate against CVS Caremark, he will be negotiating on behalf of PillPack with CVS Caremark's competitors. It will not be possible for Lavin to perform his new role without utilizing his copious knowledge of CVS Caremark's confidential information, including details of CVS Caremark's arrangements with its clients and the terms of its arrangements with thousands of pharmacies that contract with it. Further, Lavin's senior position within CVS gave him access to highly confidential information about CVS's business strategies, information that would be quite valuable to PillPack as it and its corporate parent attempt to expand their presence in the marketplace. CVS will be directly and immediately harmed if Lavin is able to take CVS's

confidential information into his new role with a competitor. For these reasons, CVS seeks to enforce the restrictive covenant agreement Lavin agreed to in May 2017.

PARTIES

1. CVS is a Rhode Island corporation with its principal place of business in Woonsocket, Rhode Island. CVS is the corporate parent of CVS Caremark, a California corporation with its principal place of business in Woonsocket, Rhode Island.

2. Lavin is an individual residing in Arizona. Until his resignation effective April 19, 2019, Lavin was Senior Vice President, Provider Network Services at CVS Caremark.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over Lavin because this action arises out of Lavin's specific contacts with the state of Rhode Island. Lavin is employed by CVS Caremark, which is wholly owned by CVS, both of which have their principal place of business in Rhode Island. In the course of his employment, Lavin regularly came to Rhode Island for trainings, business meetings, and other work activities.

4. On May 24, 2017, in consideration for the receipt of a restricted stock unit award, Lavin entered into a Restrictive Covenant Agreement with CVS, acting on its own behalf and on behalf of its subsidiaries and affiliates (the "Agreement"). A true and accurate copy of the Agreement is attached hereto as Exhibit A. The Agreement is governed by Rhode Island law. In the Agreement, Lavin agreed that any claim or dispute he has against CVS, its subsidiaries, or its affiliates must be resolved by a court in the state of Rhode Island. This action arises out of Lavin's breach of the Agreement.

5. This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1332 in that the amount in controversy exceeds \$75,000 and there is complete diversity between the plaintiff and the defendant.

6. Venue in this District is proper under 28 U.S.C. § 1391(b).

FACTS

CVS's PBM Business

7. CVS consists of, among other businesses, a retail pharmacy business and a PBM business.

8. CVS operates its PBM business through CVS Caremark.

9. CVS Caremark, among other things, sells prescription management services to entities that provide prescription drug coverage to their members, and operates mail order pharmacies. CVS Caremark's clients are primarily employers, insurance companies, unions, government employee groups, health plans, Medicare Part D prescription drug plans, Medicaid managed care plans, plans offered on public health insurance exchanges and private health insurance exchanges, other sponsors of health benefit plans and individuals throughout the United States.

10. CVS Caremark's services can include plan design offerings and administration, formulary management, specialty pharmacy and infusion services, Medicare Part D services, clinical services, disease management services and medical spend management, negotiating rebates from pharmaceutical manufacturers for drugs covered by the client's benefit plan, constructing a network of pharmacies to be included with clients' benefit plans, negotiating prices with retail pharmacies within its clients' networks, and acting as a pharmacy for clients that elect to offer mail-based prescription drug coverage for their members. CVS Caremark

operates retail specialty pharmacy stores, specialty mail order pharmacies, mail order dispensing pharmacies, compounding pharmacies and branches for infusion and enteral nutrition services. During the year ended December 31, 2018, CVS Caremark filled or managed approximately 1.9 billion prescriptions on a 30-day equivalent basis.

11. CVS Caremark, like its competitors, does not affiliate with any particular retail pharmacy. Instead, CVS Caremark has built a network of approximately 70,000 pharmacies across the United States—including CVS's retail pharmacy—to service its clients.

12. Because CVS's retail pharmacy business is only one of many pharmacies in CVS Caremark's network and CVS Caremark is only one of several PBMs contracting with CVS's retail business, CVS has implemented a firewall to restrict the flow of information between the retail pharmacy business and the PBM business. The CVS Caremark team are not able to access the terms at which the retail business has contracted with other PBMs and the retail business is not able to access the terms at which CVS Caremark has contracted with other pharmacies.

13. CVS Caremark's clients' needs and preferences determine which pharmacies within the CVS Caremark network will be included in the clients' benefit plans. For example, some clients elect to offer their members a narrow range of pharmacies because CVS Caremark has contracted with those pharmacies to offer lower prices in exchange for filling a higher share of prescriptions. Other clients prefer to offer their members a wider range of pharmacies, prioritizing flexibility for their members over lower costs. Still other clients encourage or require members to obtain their medications by mail to further reduce costs.

14. While commercial clients have discretion to select the retail pharmacies that will be covered in their benefit plans, if they decide to offer mail-based coverage, CVS Caremark

serves as the pharmacy by filling and shipping all of the client's members' prescriptions as their exclusive mail provider.

15. To comply with applicable law, CVS Caremark allows other mail-based pharmacies to be included in plans offered to Medicare customers, typically referred to as Medicare Part D coverage, so long as the mail-based pharmacies meet the other terms and conditions required of participants in CVS Caremark's network.

16. As the mail-based pharmacies have lower overhead and customer service costs than the retail pharmacies (*i.e.*, those with physical locations), CVS Caremark negotiates discounted pricing with mail-based pharmacies that wish to be included in CVS Caremark's network, which helps to lower costs for patients as well as payers.

17. CVS Caremark permits pharmacies in its network to provide up to 25% of their prescriptions to patients via mail while still enjoying retail rates. If a pharmacy provides a higher percentage of its prescriptions by mail, CVS Caremark does not consider it a retail pharmacy and seeks to move the pharmacy to a mail-based pricing model.

Lavin's Role at CVS

18. Lavin has been employed by CVS Caremark or one of the companies CVS Caremark acquired for more than 27 years. During almost all of that period of time, Lavin has been involved in provider network services.

19. Since 2011, Lavin has held the title of Senior Vice President, Provider Network Services and has been responsible for negotiating with pharmacies over the terms of inclusion in CVS Caremark's network, including the pricing to be charged for prescription fulfillment.

20. The CVS Caremark contracts with the network pharmacies tend to be short term, usually locking in pricing for one or two years before a new contract is negotiated and executed.

21. Very few people within CVS Caremark have responsibility for these negotiations. Aside from Lavin, there are two other employees with primary responsibility for negotiations, both of whom are vice-presidents and report to Lavin. Lavin's supervisor, Allison Brown, Senior Vice President of Client Financial Analysis and Proposals, sometimes has participated in the negotiations, but Lavin remained involved in the negotiations even when Brown participated. Thus, Lavin has been involved to some degree in almost every negotiation between CVS Caremark and the 70,000 pharmacies in its network.

22. Nothing about the rates pharmacies charge CVS Caremark is public. This information is only disclosed within the company to a select group of people, including the network group and PBM underwriting, who require the information to perform their jobs, and only these employees have access to pharmacy rates information on the company's information systems.

23. CVS Caremark is required by the contracts it enters into with the pharmacies to maintain as confidential the agreed-upon rates and other material terms. It is not permitted to share this information with third-parties, including other pharmacies.

24. CVS Caremark would be significantly harmed if the pharmacy rates were known to anyone who was negotiating on behalf of other pharmacies or the clients. The pharmacy rates are the foundation for the pricing CVS Caremark offers to its clients and the revenue CVS Caremark generates from its business.

25. Substantially all of CVS Caremark's revenue is generated from dispensing and managing prescription drugs to eligible members in benefit plans maintained by clients. This revenue is highly dependent on the amount network pharmacies charge to provide those drugs under the contracts with CVS Caremark. Those amounts, and their components, are highly

confidential information, access to which is limited to employees who require such access as part of their jobs. Each year, there is tremendous pressure on rates clients pay to the PBM in what is a highly competitive industry. CVS Caremark (through Lavin) has to negotiate increasingly better rates with the pharmacies in each contract term to remain competitive. Those negotiations would be compromised, to CVS Caremark's detriment, if the pharmacies knew the rates CVS Caremark agreed to with other pharmacies, particularly in a one to two year selling cycle.

26. Lavin is privy to the source information regarding both client fees and the amounts reimbursed to retail network pharmacies. Lavin has been informed of the rates that CVS Caremark charges its clients because he needs that information to be able to negotiate commercially viable terms with the pharmacies. In addition, the rates agreed-to with pharmacies determine how CVS Caremark prices its arrangements with PBM clients generally. Lavin also knows of any non-standard or unique contract concessions CVS Caremark has accepted in contracts with individual pharmacies to achieve the required price points. This information is also highly confidential and shared with very few employees.

27. While the firewall between CVS's retail pharmacy business and CVS Caremark prevents Lavin from knowing what the pharmacy business is charging other PBMs, Lavin knows the rates CVS's retail pharmacy business has agreed to with CVS Caremark because he negotiated those contracts. CVS would be harmed if those rates were known to other pharmacies that compete with CVS's retail pharmacy business. If PillPack (or any other pharmacy) knows what CVS's pharmacy business is charging a PBM, PillPack can price its own services accordingly.

28. In the last several months, Lavin has also been deeply involved in CVS Caremark's strategy for the upcoming selling season, which necessarily includes pricing and

other types of very sensitive information to be used for the next 12-18 months. Lavin has detailed knowledge of CVS Caremark's current and future strategy for dealing with mail pharmacies in its retail networks, including how CVS Caremark identifies whether such pharmacies should be deemed mail pharmacies, the terms and conditions under which they are permitted to participate in CVS Caremark's network, the rates that are offered (versus the rates offered to retail pharmacies), and the rates paid for CVS Caremark's own mail services. Relatedly, Lavin has detailed knowledge of CVS's multi-dose packaging offerings, which is one of PillPack's offerings.

29. As a member of CVS's senior management, Lavin also received and generated information about the company's overall business strategy and performance. For example, he has participated in confidential meetings and discussions on the topic of preparing the retail pharmacy business to compete against new entrants to the market, including Amazon and PillPack.

30. CVS is unique in that it is the only entity that successfully operates both a retail pharmacy business and a PBM business. Thus, while Lavin is not privy to all of the retail pharmacy business's confidential information, he is one of the few people in the industry with significant insight into both sides of the pharmacy-PBM relationship.

Lavin's Restrictive Covenant

31. Lavin entered into the Agreement on or about May 24, 2017, in connection with a Restricted Stock Unit ("RSU") award. The RSU award was the consideration for entering into the Agreement and complying with its terms.

32. Section 2 of the Agreement provides that during Lavin's employment and for 18 months after, Lavin would not "directly or indirectly engage in Competition." Competition is defined as "providing services to a Competitor . . . that (i) are the same or similar in function or purpose to the services that I provided to the Corporation at any time during the last two years of my employment by the Corporation; or (ii) will likely result in the disclosure of Confidential Information to a Competitor or the use of Confidential Information on behalf of a Competitor." Competitor is defined as any person, corporation or other entity that competes with one or more of the business offerings of the Corporation," which expressly include both PBM services (specifically including the mail order pharmacy component of the PBM business) and retail pharmacy services.

33. In the Agreement, Lavin expressly agreed "to this enterprise-wide definition of non-competition which may prevent me from providing services to any of the Corporation's PBM, Retail, MinuteClinic, Long-Term Care and Infusion Competitors or any combination thereof during the Non-Competition Period."

34. This restriction is necessary to protect CVS's confidential information, including competitive information about third parties that it is contractually required to protect, and prevent employees from intentionally or unavoidably using CVS's confidential information to compete unfairly against CVS.

35. Section 4 of the Agreement prohibits Lavin from disclosing “any of the Company’s Confidential Information,” which expressly includes non-public information such as:

trade secrets; computer code generated or developed by the Corporation; software or programs and related documentation; strategic compilations and analysis; strategic processes; business or financial methods, practices and plans; non-public costs and prices; operating margins; marketing, merchandising and selling techniques and information; customer lists; **details of customer agreements**; pricing arrangements with pharmaceutical manufacturers, distributors or suppliers including but not limited to any discounts and/or rebates; **pharmacy reimbursement rates**; expansion strategies; real estate strategies; operating strategies; sources of supply; patient records; **and confidential information of third parties which is given to the Corporation pursuant to an agreement to keep such information confidential.** (emphasis added).

Lavin’s Resignation from CVS

36. On or about, April 8, 2019, Lavin emailed a resignation notice to his direct supervisor, Allison Brown, with a copy to human resources director Tina Walston. A true and accurate copy of Lavin’s resignation notice email is attached hereto as Exhibit B.

37. Lavin’s resignation notice email stated that his resignation would be effective April 19, 2019.

38. Lavin wrote in his resignation notice that he would be starting a new career with Amazon and added, “I do not believe there should be any issues with my new career, but if CVS Caremark has any concern, they should feel free to contact my attorney or Amazon’s attorney[.]” Lavin then provided the name of Amazon’s attorney and the name and contact information of his attorney. There was no explanation in the letter of which Amazon business Lavin was joining or what his role would be.

39. Following Lavin’s resignation notice, CVS Health’s Senior Vice President, Human Resources, Carolyn Wiesenbahn, contacted Lavin and asked him to provide more detail about his role at Amazon.

40. On or about April 12, 2019, Lavin responded to Wiesenhahn by email. A true and accurate copy of Lavin's email is attached hereto as Exhibit C.

41. In his response, Lavin stated that he would be working in Amazon's PillPack pharmacy business and handling its negotiations with PBMs. Lavin further stated that he would not have any involvement in the relationship between PillPack and CVS Caremark during his non-compete period.

42. PillPack is a mail order pharmacy. It competes with CVS Caremark's mail order pharmacy and CVS's retail pharmacy business, and it participates in CVS Caremark's pharmacy network.

43. In effect, Lavin has represented to CVS that in his new role he would still be negotiating between pharmacies and PBMs; he would just be switching sides and negotiating with CVS Caremark's competitors.

Lavin's Role At PillPack Threatens Disclosure And Misuse Of CVS's Confidential Information

44. As Amazon's PillPack business is one of the pharmacies in CVS Caremark's network, CVS Caremark and Lavin have previously negotiated pricing terms with PillPack. They have specifically negotiated with PillPack about treating the business as a mail-based pharmacy rather than a retail pharmacy because more than 25% of PillPack's prescriptions are delivered by mail.

45. On information and belief, other PBMs are also seeking to treat PillPack as a mail-based pharmacy in their networks.

46. On information and belief, PillPack is resisting this re-characterization as it will reduce the amount of money PillPack can charge for filling prescriptions on behalf of the PBMs' clients.

47. Because Lavin has led efforts at CVS Caremark to treat PillPack as a mail-based pharmacy, he would be uniquely positioned at PillPack to oppose such efforts by CVS Caremark and other PBMs.

48. Even if Lavin does not negotiate directly with CVS Caremark, it is impossible to prevent his knowledge from being used against CVS Caremark. Lavin's knowledge of CVS Caremark's business, and specifically the confidential terms on which pharmacies were able to strike deals with CVS Caremark, will allow Lavin to strike more favorable deals for PillPack with CVS Caremark's competitors. Those contract terms will be known to and utilized by the person or people negotiating with CVS Caremark, who can then insist on receiving the same terms from CVS Caremark as PillPack is receiving from all other PBMs.

49. Lavin's use of CVS Caremark's confidential information in negotiations to strike more favorable deals for PillPack also harms CVS Caremark by placing PillPack in a stronger negotiating position when it is negotiating with CVS Caremark. Even if Lavin does not actually negotiate with CVS Caremark, he can use his knowledge of how CVS Caremark negotiates with pharmacies to position PillPack to set its pricing in a way that will allow it to gain market share. If PillPack gains additional market share, clients and their members are more likely to insist on PillPack being included in their network, which will limit CVS Caremark's negotiating position with PillPack.

50. Lavin's role in negotiations with other PBMs also necessarily places at great risk of use and disclosure the terms he has negotiated with PillPack's competitors, which CVS has a contractual obligation to keep confidential. Lavin's negotiations with other PBMs on behalf of PillPack will necessarily be informed by the rates PillPack's competitors have agreed to with CVS Caremark.

51. Lavin's use of CVS and CVS Caremark's confidential information on behalf of PillPack also will cause direct harm to CVS because PillPack competes with both the CVS retail pharmacy business and the CVS Caremark PBM business to the extent the latter is serving as a mail-based pharmacy. CVS places a firewall between its retail pharmacy business and its PBM business to prevent the unfair advantages the pharmacy would attain from knowledge of the PBM business's contracts. If he is allowed to join PillPack, Lavin would be gaining that unfair advantage on behalf of a competitor pharmacy – negotiating against PBMs using all the confidential information he learned at CVS Caremark while on the other side of the negotiating table. Lavin would also be assisting PillPack in competing against CVS's businesses while fully informed of the strategies CVS has developed and deployed for competing against new market entrants like PillPack.

52. Enforcement of the covenant not to compete would protect CVS's confidential information by restricting Lavin for working in a position where he can, and inevitably will, use the information against plaintiffs for a period of 18 months. Because the contracts between CVS Caremark and its pharmacies are generally for a period of two years or less, the non-compete period is narrowly tailored to protect the confidential information.

COUNT I – BREACH OF CONTRACT

1. CVS repeats and re-alleges the allegations contained in paragraphs 1–52 above.
2. Lavin's Restrictive Covenant Agreement (the "Agreement") is a binding and enforceable agreement between Lavin and CVS.
3. The covenant not to compete within the Agreement is reasonable in time and scope and serves the legitimate business purpose of protecting CVS's confidential information and goodwill.

4. Lavin has breached, or has threatened to breach, the Agreement by becoming employed by PillPack in a competitive position within 18 months of the termination of his employment.

5. CVS has been or will be harmed by Lavin's breach of contract and will continue to be harmed as long as Lavin is permitted to work at PillPack.

REQUEST FOR RELIEF

Wherefore, Plaintiff CVS Pharmacy, Inc. respectfully requests that this Court grant the following relief:

- A. Enter judgment for Plaintiff against Defendant on all counts of this Complaint;
- B. Award Plaintiff damages in an amount to be determined at trial;
- C. Issue preliminary and permanent injunctive relief to restrain and enjoin Defendant from working at PillPack for a period of 18 months from the date of the order;
- D. Award Plaintiff attorneys' fees, costs and expenses in this action; and
- E. Grant any such other relief that the Court deems just and proper.

JURY DEMAND

Plaintiff CVS demands a trial by jury on all claims so triable.

Respectfully Submitted,

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